IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15748 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAULIK @ PAPPU JAGDISHBHAI @ JAGABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

Mr.H.R.Prajapati for petitioner.

Mr.L.R.Pujari, AGP for the respondents.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/12/2007

ORAL JUDGMENT

1. Heard Mr.H.R.Prajapati for the petitioner and learned A.P.P. Mr.L.R.Pujari for the respondents.

2. By way of the the present petition, the

petitioner-detenu has challenged the legality and validity of the order of detention dated 11-1-2007 passed by the District Magistrate,Panchmahls, Godhra,in exercise of powers under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985(for short “the Act”).

3. The petitioner-detenu is branded as a “ bootlegger” within the meaning of Sec.2 (b) of the Act as he was found involved in offences under the Bombay Prohibition Act by engaging himself in the illegal sale and distribution of country liquor. While passing the order of detention the detaining authority has considered the fact of registration of three cases – CR no.5010/2005 dt.10-1-2005 for offence punishable under Sections 66.1BB, 65AE, 81 and 116(1)B and CR no.1608/2005 dt.29-9-2005 for offence punishable under Secs.66B, 65AE, 116-B, 81 and 83 and 81, both under the Bombay Prohibition Act and the statement of the accused in the probibition cases.

4. The learned Advocate for the petitioner-detenu has assailed the order under challenge on various grounds as mentioned in the memo of petition.

However,this petition is capable of being disposed of on the sole ground as to whether there was cogent and credible material placed before the detaining authority to come to the conclusion that by the activitries of the petitioner, the public order was disturbed.

5. To reach to the subjective satisfaction that the bottlegging activities of the petitioner were prejudicial to the maintence of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property etc. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

6. In the present case, the two under trial criminal cases registered against the petitioner under the Prohibition Act and the activities of the

petitioner of engaging himself in the illegal sale and distribtion of country liquor can at the most be said to be involving law and order problem for which for which the petitioner can be adequately punished.It is therefore difficult for this Court to accept that the petitioner has been rightly detained as the activities of the petitioner can at the most be termed as affecting law and order. In short, no further discussion on the other points raised in this petition is required as in the opinion of this Court, the order of detention is not sustainable in the eye of law. In this context reference may be had to the decision rendered in the case of Harpreet Kaur vs. State of Maharashtra, reported in 1992 SC 797, wherein it has been held that involvement of the accused in fourteen offences including lifting of gas cylinders cannot be said to be prejudicial to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility..”

7. In the result, the petition is allowed. The

impugned order of detention dated 7-10-2005 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

(M.D.Shah,J.)

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